The Solicitors' Journal

VOL. LXXXIV. **Saturday, August 10, 1940.** No. 32

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.

SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.

Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*

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Current Topics.

What is an "Extent"?

THAT there are occasional gaps in the professional knowledge even of those who sit on the scarlet benches of the Upper House was amusingly illustrated last week when, during the hearing of an appeal, the subject of "extents" being referred to, one of their lordships laughingly admitted that he never had the slightest idea of the meaning of the technical term "extent." Certainly the word in its legal connotation is rarely heard nowadays, save occasionally in revenue cases, but it is very clearly explained in HALSBURY'S classic work, where we read that the writ of extent is the process by which the Crown can seize the body, lands, goods and debts or choses in action of its debtor by summary process for the purpose of obtaining satisfaction of debts due to it. Considering thus the wide scope of the writ as regards what may be seized under its authority, it certainly well merits its particular designation of "extent."

Emergency Powers (Defence) (No. 2) Act.

WHEN the Emergency Powers (Defence) (No. 2) Bill came before the House of Lords in committee on 31st July, the scope of the regulations capable of being made thereunder were defined in the paragraph to be inserted after s. 1 (2) (*a*) of the Courts Emergency Powers Act, 1939, as follows: "(*aa*) make provision for the apprehension and punishment of offenders and for their trial by such Court, not being Courts Martial, and in accordance with such procedure as may be provided for by the Regulations, and for the proceedings of such Courts being subject to such review as may be provided for"; the House of Lords approved of this addition: "so, however, that provision shall be made for such proceedings being reviewed by not less than three persons who hold or have held high judicial office, in all cases in which sentence of death is passed, and in such other circumstances as may be provided by the Regulations." In proposing the amendment, the Lord Chancellor referred to the suggestion that the review should extend as a matter of course to cases where the sentence was a serious and lengthy sentence of penal servitude. He was, however, communicating with the Home Secretary on the subject, and had no doubt that it would be possible to cast the regulations in a way which was in accordance with the wishes of the House. Later, replying to a question as to the intended scope of the review of convictions and sentences, LORD SIMON intimated that he would endeavour in arrangement with the Home Secretary to provide that there should be an automatic review of such cases, and said that in addition to that, there might well be other cases which, although they did not involve such heavy punishment, nevertheless did for one reason or another raise particular difficulties. The amendment was approved by the House of Commons on the following day, when the Home Secretary expressed his appreciation of the helpful spirit shown by those who took part in the consultations with himself and the Attorney-General which had resulted in the framing of the above amendment. He also intimated that some provision ought to be made for a review in suitable circumstances of cases in which there was a sentence less than a death sentence. The Bill received the Royal Assent on the same day.

Agriculture (Misc. War Provisions) (No. 2) Bill.

THE Agriculture (Miscellaneous War Provisions) (No. 2) Bill was read a second time in the House of Commons on 1st August, the money resolution in connection with the measure being agreed to in committee on the same day. Mr. R. S. HUDSON, the Minister of Agriculture, moving the second reading, explained that the object of the Bill was to supplement certain existing powers. Clause 1 enabled grants to be given, on the same lines as existing mole-drainage grants, for drainage by other methods—such as tile or stone drainage—and also made provision for the simplification of procedure for ditch-clearing schemes and for the assimilation of that procedure to mole-drainage procedure, so that all forms of farm drainage could be treated on the same basis. It was also proposed that grants for ditching should be made only through a drainage authority, and powers were being taken to enable grants to be made through county war agricultural executive committees. The same clause also provided that where a tenant, in pursuance of a notice served on him on behalf of a war agricultural executive committee, carried out mole-drainage work he should be entitled under the Agricultural Holdings Act, 1923, to compensation for part of the expenditure incurred, and not for the part which was represented by the grant. Clause 2, it was explained, would enable grass roads over certain fen land to be made into hard roads at the expense of the Government and through the war agricultural executive committees, the expense being recoverable from the owners on the basis of the enhanced value of the land. Mr. HUDSON went on to deal with cl. 4, which is concerned with the protection required by tenants of grass land against the terms of their leases preventing the ploughing up of the land. It was not always possible to make sure that the order to plough was served on the farmer before ploughing started, and the object of the clause was to enable the order to plough to be treated as having been served, though it might have been served after the ploughing had started. This provision is for the duration of the war. Clause 5 deals with the position where a farmer or owner fails to comply with an order to carry out work. In such case the appropriate committee is to be empowered to do the work and recover the cost and also to prosecute the occupier if the case requires that course. The next two clauses apply only to Scotland, and cl. 8 is designed to simplify the procedure in cases of requisition of land for sport or recreation. Mr. HUDSON urged in conclusion that the Bill was designed merely to supplement existing powers and to try to shorten as far as possible any delay that might in future arise in carrying on the intensified campaign of increasing food production.

War-time Street Illumination.

COMPLAINTS received of unauthorised persons turning out the lights provided in accordance with the war-time system of street illumination known as "starlighting" have led to a warning being given that interference with the lights is a punishable offence. It is thought that such interference may have been prompted by the notion that the lights can be seen by enemy aircraft. This is denied by Mr. A. C. CRAMB, director of the Electrical Development Association, which represents the majority of electricity supply authorities in the United Kingdom. The war-time street lighting, he has said, wherever used, conforms to a standard approved by the Ministry of Home Security only after extensive experiments in collaboration with the Royal Air Force. The illumination given is less than that of bright starlight, and very much less than moonlight. He suggests that some people may have been misled by the fact that the light may be clearly seen by anyone standing at ground level some 10 to 20 yards from the lamp-post. But anyone can prove for himself by walking a little further away that the light rapidly diminishes. This is due to the downward "cut off" which makes it impossible for a direct light from the lamps ever to be seen from an aeroplane. Moreover, it is said, the amount of illumination cast on the ground is negligible, as the Air Force has proved to its own satisfaction. It is urged that these lights have been of immense help in reducing street accidents, while any tampering with the system during an air raid or otherwise is a serious interference with civil defence services such as rescue and demolition squad work.

Rules and Orders: Limitation of Supplies.

THE Limitation of Supplies (Miscellaneous) (No. 3) Order, 1940, amends the original Limitation of Supplies (Miscellaneous) Order with the object of protecting controlled businesses whose trade has been restricted by the original Order from possible development of unfair competition from new businesses. Under the provisions of the earlier Order limiting home trade in certain "non-essential" consumer goods, a manufacturer whose monthly sales amounted to less than £250 before control was established, or less than £167 thereafter, was not required to register. The new Order provides that this exemption of the small manufacturer from control shall not apply to any person who began the manufacture of any class of controlled goods after 23rd July. Exception is permitted only in cases where an existing non-controlled small business, established before that date, is taken over by a person who has not previously carried on such a business. Every person establishing a new business, however small, after the date above mentioned, must apply for registration and his sales will be controlled as a registered person. The new Order also makes a number of additions to and deletions from the list of "non-essential" goods, the sale of which to retailers and to the general public is restricted.

Courts (Emergency Powers) Act: Receiver's Sale.

The Times of 31st July contains reference to an application by debenture-holders, and by the joint receivers and managers, of certain property of a company for an order that the applicants be at liberty to sell the property. Since the appointment of the receivers and managers the company (which did not appear) had gone into voluntary liquidation, and it had been thought advisable to join the debenture-holders, as well as the joint receivers and managers, as applicants. The matter came before BENNETT, J., who intimated that the fact that the company had gone into voluntary liquidation since the appointment of the receivers and managers put an end to the latter's agency so far as the company was concerned, and observed that from the time of the voluntary liquidation the receivers and managers were acting as agents for the debenture-holders whose agents they became. The question whether, desiring to sell, they had to obtain the leave of the court, depended on the meaning of s. 1 (2) of the Courts (Emergency Powers) Act, 1939, having regard to the facts of the case. The subsection provided, among other things, that a person should not be able, without the court's leave, to proceed to exercise any remedy available to him by way of realisation of any security. The learned judge held that it was necessary for the leave of the court to be obtained at the instance of the debenture-holders, whose agents the receivers and managers must be assumed to be. That was the meaning of the Act on the facts of the present case. There was, his lordship said, no difficulty in making the order for which the applicants asked. No view was expressed on what the position was where a receiver had been appointed under hand, had had power to sell conferred on him, and been made the company's agent, and the agency had not been determined by voluntary liquidation (as in the present case), or otherwise.

Recent Decisions.

IN *Böhm* v. *Czerny* (*Interpleader issue*) (*The Times*, 26th July), SIMONDS, J., held that the plaintiffs in England, who were partners in a firm of hat manufacturers in Czecho-Slovakia, were entitled to give a good receipt and discharge for a sum of money representing the price of goods bought from the firm by its customers in New Zealand and held by the Bank of New Zealand at its London branch. His lordship negatived the claim of the defendant, who had been appointed commissar manager of the firm under a decree made under a decree of Herr Hitler relating to the government of the Sudetenland. The first-mentioned decree was a confiscatory decree and, it was held, inoperative outside the State which enacted the confiscatory legislation.

In *Wodehouse* v. *Levy and St. Marylebone Borough Council* (*The Times*, 31st July) the Court of Appeal (MACKINNON, LUXMOORE and GODDARD, L.JJ.) reversed a decision of CASSELS, J., and held that inasmuch as the obligation of a Metropolitan Borough Council to light street refuges under s. 130 of the Metropolis Management Act, 1855, had been suspended by the Lighting (Restrictions) Order, No. 1098 of 1939, there was no statutory, and (as the court further held) no common law, obligation to light a street refuge. An action for damages for personal injuries sustained by a passenger as a result of a collision of a taxi-cab with an unlighted street bollard which the plaintiff had brought against the owner and the driver of the vehicle and against the council was not, therefore, maintainable against the last named.

In *Re Lidington, deceased; Lidington* v. *Thomas* (*The Times*, 31st July), FARWELL, J., on an application by a widow for an order for provision for maintenance under the Inheritance (Family Provision) Act, 1938, directed that the income of two-thirds of the estate of the deceased should be applied in paying that amount to the widow so long as she should remain unmarried and her children (two sons) were infants, on condition that she maintained them. The estate had been valued at £3,600, but a liability under a lease might reduce it. The income of £130 a year payable to the applicant under a separation deed ceased with the husband's death.

In *Fulham Borough Council* v. *A. B. Hemmings, Ltd.* (*The Times*, 1st August), a Divisional Court of the King's Bench Division (HUMPHREYS, ATKINSON and CROOM-JOHNSON, JJ.) affirmed the decision of a metropolitan police magistrate who had held that in an appeal under s. 54 (3) of the Factories Act, 1937, relative to the condition of basement bakehouses, he was not restricted to the consideration of the state of the premises at the date of the notices to withdraw the certificates of suitability, but was entitled to regard the altered conditions arising from the installation of air-conditioning plant which had been effected between the date when the matter first came before him and the date of the adjourned hearing. The court intimated that the proceedings before the magistrate were analogous to those in which a court was asked to abate a nuisance.

In *Nokes* v. *Doncaster Amalgamated Collieries, Ltd.* (*The Times*, 2nd August), the House of Lords (LORD SIMON, L.C., LORD ATKIN, LORD THANKERTON and LORD PORTER, LORD ROMER dissenting) reversed a decision of the Court of Appeal (Sir WILFRID GREENE, M.R., and FINLAY and DU PARCQ, L.JJ.) which affirmed that of a Divisional Court (LORD HEWART, C.J., and CHARLES and MACNAGHTEN, JJ.), and held that s. 154 of the Companies Act, 1929, did not apply to contracts of personal service so as to render a workman employed by a company liable in damages for breach of contract to another company on absenting himself from work after the property, rights and liabilities of the former company had been transferred to the latter by an order of court under the above-mentioned section.

In *E. H. Jones (Machine Tools), Ltd.* v. *Edward Charles Farrell and Eric William Muirsmith* (*The Times*, 3rd August), BENNETT, J., held that para. 55 of the Defence Regulations, 1939, exceeded the authority conferred by the Emergency Powers (Defence) Act, 1939, on the rule making authority. The power granted was restricted to making regulations authorising the taking possession or control on behalf of the Crown of any property or undertaking and did not authorise the making of a regulation for the carrying on, on behalf of the undertakers, of any undertaking which was authorised to be taken possession of on behalf of the Crown. His lordship accordingly granted an injunction restraining the defendants, who had been appointed under the said paragraph, from in any way interfering with the control and management of the affairs of the plaintiff company and its banking account.

Courts (Emergency Powers) Amendment Act, 1940.

THE Courts (Emergency Powers) Amendment Act, 1940, enacted on 10th July, 1940, amends the Courts (Emergency Powers) Act, 1939, and removes certain hardships which experience had revealed. There are *five* operative sections dealing with a variety of matters. The two Acts may be cited together as the Courts (Emergency Powers) Acts, 1939 and 1940.

Defaulting Tenant or Mortgagor.

Where the lessor or mortgagee of uncontrolled premises applies for leave to exercise any right or remedy mentioned in s. 1 (1) (2) and (3) of " the principal Act "—i.e., the 1939 Act, as amended by the Possession of Mortgaged Land (Emergency Provisions) Act, 1939 (see s. 7 (2) of the 1940 Act)—because of a default in payment of *rent*, or *mesne profits*, or of an *instalment* of or *interest* on mortgage money, the appropriate court must not make leave to proceed conditional on any default in payment falling due *after* the date of the hearing. The court will deal with the position as it stands at the date of the hearing. But the lessee or mortgagee may make a *subsequent application* to vary the conditions, or for unconditional leave, having regard to any *subsequent default*, i.e., between the first and the subsequent applications (s. 1 (1)).

" Lease " *includes* an underlease and any contract of tenancy (s. 7 (2)).

Relief from Forfeiture.

Where the appropriate court, *after* 10th July, *refuses* leave under s. 1 of the principal Act to obtain *recovery of possession* in default of payment of rent, or grants conditional leave, the lease will be *deemed not to have been forfeited ;* it continues in force, but only while the judgment or order remains unenforceable (s. 1 (2)).

Where the appropriate court, *before* 10th July, had refused such leave under s. 1 of the principal Act, or had granted such leave conditionally, and the judgment or order remains unenforceable, the person who would be entitled to the benefit of the lease if it had not been forfeited may *apply to the court for relief from forfeiture.* The court may grant relief for so long only as the judgment or order remains unenforceable (s. 1 (3)).

Where the court grants this relief, any order made under the Law of Property Act, 1925, s. 146 (4), *vesting* the premises or any part in an *underlessee*, will have effect subject to this relief (s. 1 (4)).

Court may take account of other Liabilities.

In *A* v. *B* [1940] 1 K.B. 217, 225, 226 ; 83 SOL. J. 870, Sir Wilfrid Greene, M.R., said that where an application is made for leave to proceed, the burden of proof under s. 1 (4) of the principal Act rests *on the defendant* to prove two things : first, that he is unable *immediately* to satisfy *the judgment*, and, secondly, that this inability arises by reason of circumstances directly or indirectly attributable to the war. The existence of *other debts* is not an " irrelevant consideration," though the weight may vary.

It is now " declared for the removal of doubt " that on an application to exercise any right or remedy mentioned in s. 1 (1) (2) or (3) of the principal Act, the court, in determining whether leave to proceed should be given or refused, *or* whether leave should be given subject to restrictions and conditions, *may take account of other liabilities, present or future*, of the person liable. There is a *proviso* that s. 1 of the 1940 Act is unaffected, nor will the court be enabled to make leave conditional on a failure to satisfy " any such other liability " (s. 2 (1)).

Service of Application on other Claimants.

In *Brandon* v. *Reidy* (1940), 56 T.L.R. 658, 660 (84 Sol. J. 378), where the landlord had asked for leave to proceed against his tenant, Goddard, L.J., suggested that where there was a mortgage of the sub-lease and the three people " vitally interested " were the mesne landlord, his tenant and the mortgagees, the court should be able " in a proper case " to have all the parties interested before them. " One has to try to do a certain amount of what Lord Justice Scott has called distributive justice, and distribute what the debtor may be able to pay between the various people."

It is now enacted that rules may provide for the *service* of notice of any application for leave to proceed *upon other persons having claims* against the person liable, and for enabling those persons to be heard (s. 2 (2)).

Mortgagors in Armed Forces.

Instances appear to have arisen where, since no appearance was made on behalf of a mortgagor absent on war service, he has not discharged the onus of proving that he was unable to pay, and the mortgagee has secured his order accordingly. In such a case the *burden of proof* is now cast, by statute, *upon the mortgagee.*

Where a mortgagee of *a dwelling-house* applies for leave to exercise a right or remedy mentioned in s. 1 (2) or (3) of the principal Act, and *the mortgagor* is *serving in the armed forces* of His Majesty (otherwise than as a local defence volunteer : see s. 7 (2) of 1940 Act), *or* is *mainly dependent* on a person so serving, the appropriate court may, " in its absolute discretion," refuse leave to proceed or grant conditional leave, *unless it is satisfied*—

(*a*) that the mortgagor is able *immediately* to pay the debt or perform the obligation, *or*

(*b*) that his *inability does not arise* by reason of circumstances directly or indirectly attributable to *the war* (s. 3 (1)).

See the observations by Farwell, J., made in another connection in *Soho Square Syndicate, Ltd. and Another* v. *E. Pollard & Co.* [1940] 1 Ch. 638, 646, citing a valuable observation of Sir Ernest Pollock, M.R., in *Dewhurst* v. *Salford Guardians* [1925] Ch. 655, 665 (84 Sol J. 364). The new section is manifestly just.

Where, at the hearing of the application, the mortgagor is *not present or is not represented*, he will be *deemed a person serving* in the armed forces, or one mainly dependent on a person so serving (for the purpose of s. 3 (1)), *unless the applicant proves the contrary* (s. 3 (2)).

Appointment of Receiver.

On the other hand, the mortgagee will not be without his remedy. Rules of court may provide that in certain cases and subject to certain conditions *the mortgagee may apply ex parte* for leave to appoint *a receiver* of the rents and profits of any mortgaged *dwelling-house* (s. 3 (3)).

Attornment Provisions.

The Possession of Mortgaged Land (Emergency Provisions) Act, 1939, s. 1 (1), restricted the right of mortgagees to obtain possession of land mortgaged before 3rd September, 1939. Does this apply to a right to possession by virtue of any attornment provision in the mortgage ?

" For the avoidance of doubt " it is now " declared " that s. 1 (1) will be deemed to read (and to have read) thus :—

" . . . the mortgagee shall not be entitled to obtain possession of the land *whether by virtue of his estate or interest as mortgagee or of any attornment or other provision contained in the mortgage or in any agreement collateral thereto* . . ."

The words in italics are now added by s. 3 (4) of the 1940 Act.

Restriction on delivery of Goods.

In *S. & A. Services, Ltd.* v. *Dickson* (1940), 56 T.L.R. 837, 838 (84 Sol. J. 423), the court said that the remedies specified in s. 1 (2) (*a*) of the principal Act are extra-judicial. " *Extra-judicially* to take possession of property to which you are entitled, you may not do without leave. On the other hand, you were free to issue a writ, obtain judgment, and apply *as of right* for a writ of delivery." (See *per* Clauson, L.J.)

This is now changed. Section 1 (3) of the principal Act prevents persons proceeding without leave to execution on judgments for the recovery of possession of *land* in default of payment of rent, or for the recovery of possession of land by a mortgagee by reason of a default in the payment of money. To these words are added :

" or for the delivery of *any property other than land* by reason of a default in the payment of money " (s. 4 (1) of the 1940 Act).

Hire-Purchase Agreement ; Title to Goods.

Where the appropriate court refuses leave under s. 1 (4) of the principal Act to take possession of goods let under a hire-purchase agreement, or to execute a judgment for the delivery of the goods, or grants conditional leave, and *the hirer pays the hire-purchase price before* possession is taken or the judgment is executed, the owner's *title to the goods vests in the hirer*, even though he has failed to pay the hire-purchase price upon the contractual dates (s. 4 (2)).

For the meaning of these hire-purchase terms, see Hire-Purchase Act, 1938, s. 21 (1).

Person liable to satisfy the Judgment.

Where an application is made to enforce a judgment for the recovery of the *possession of land* in default of payment of rent, the person liable to satisfy the judgment, or pay the rent, or perform the obligation (as mentioned in s. 1 (4) of the principal Act and s. 2 of the 1940 Act), means *only* the person against whom the judgment was given *and* who is entitled to the benefit of the lease, or would be but for any forfeiture incurred through the default (s. 5 (1)).

Distinct Parcels; Several Lessees; One Lease.

Where an application is made to enforce a judgment for the recovery, in default of payment of rent, of possession of land held in *distinct parcels* under *one lease* by two or more lessees, the court may deal with the application *as if* there had been *distinct leases* and applications had been made to enforce separate judgments. This will be the case even though a single rent was reserved, and the proviso for re-entry was not severable. The court may, as seems just, *apportion the arrears*, relieve *any lessee* from forfeiture of his parcel, and *adjust the rights and obligations* of the parties (s. 5 (2)).

Costs.

A judgment for *costs only* is excepted by para. (*c*) of the proviso to s. 1 (1) of the principal Act; in that case, no leave to proceed is required.

"Costs" will be deemed to include "all charges and possession money payable to a sheriff in respect of interpleader proceedings taken by him" (s. 5 (3) of 1940 Act).

A Conveyancer's Diary.

Protective Trusts.

A FEW weeks ago I expressed the doubts that have long been troubling me concerning the modern policy of creating "protected life interests." My comments on the subject have been criticised in a contemporary (190 L.T. Newsp. 29) as being unsound in law and erroneous in practice. It is desirable, therefore, to go into the matter somewhat more fully from the point of view of the cases.

It may be remembered that I contended that the practice is undesirable because the primary beneficiary can incur debts, secure in the knowledge that he can live as comfortably after forfeiture as before it, a state of affairs unfair to creditors and unwholesome for the primary beneficiary.

The basis of this criticism lies in the fact that the primary beneficiary is one of the objects of the discretionary trust which arises on the determination of his prior life interest. That being so, the trustees can in practice exercise their discretion either by paying the whole income to the primary beneficiary, or by spending it all for his benefit. No doubt his wife and issue, or, in their absence, more remote relatives, are objects of this discretionary trust. Indeed, where there are wife and issue and the wife is a reasonably competent person, the trustees may very well pay the whole, or a substantial part, of the income to her. In doing so they are interpreting the phrase "protective trusts" as meaning that those trusts protect the dependents of the primary beneficiary against the direct consequences of his insolvency. But in fact these trusts are also protective in the sense that they protect the primary beneficiary himself against those consequences. I have great difficulty in imagining a case in which the primary beneficiary is *unmarried*, where the trustees would apply the income for the benefit of his brothers, sisters, aunts or cousins and not for his own. Further, there is no practical consideration to induce unwilling trustees to apply the income for a wife or children.

It is said that the trustees cannot continue to pay all the income to the primary beneficiary, and that they must only pay him what is reasonably necessary for his support. The authorities cited for this proposition are *Holmes* v. *Penney*, 3 K. & J. 90, and *Re Ashby* [1892] 1 Q.B. 872. In the latter of those two cases, Vaughan Williams, J., had to decide whether a certain settlement could be set aside in the bankruptcy of A, as being a settlement of A's property upon himself. That was the point of the case. After dealing with it, the learned judge added that he wished to say a word about the discretionary trust, and proceeded: "I am of opinion, having regard to *Holmes* v. *Penney*, that although the presence in this settlement of the discretionary power to the trustees does not make the settlement void as against creditors *and may practically, to a great extent, give the bankrupt the advantage of the forfeited estate, or the advantages which he would have gained as the owner of the forfeited estate*," (my italics) "yet, inasmuch as the advantages can only be gained at the discretion of the trustees, it seems to me on the authority of that case that if the trustees, in the exercise of their discretion, do pay the rents and profits of this estate to the bankrupt, to the extent to which the sums are paid to the bankrupt in excess of the amount necessary for his mere support, then the trustee in bankruptcy will be able to insist upon the bankrupt accounting to him for the rents and profits so received" (at p. 877). I have searched the report of *Holmes* v. *Penney* in vain for any proposition which bears a resemblance to that for which Vaughan Williams, J., here cited it. So far as I can see, *Holmes* v. *Penney* was concerned with the question whether or not the particular settlement was good as against creditors, and the Vice-Chancellor added at the end that he found it impossible to say how much of the income under the discretionary trust had to be given to the wife and children and not to the bankrupt. Further, assuming that the primary beneficiary can be made to account by the trustee in bankruptcy, that right only lasts until his discharge. If, at that date, the creditors have not been paid in full, they will get no more even if the whole future income is paid to the primary beneficiary. Again, it is absolutely beyond doubt that the trustees may, in the exercise of their discretion, *expend* as much as they please upon goods and services for the primary beneficiary (see *Re Coleman*, 39 Ch. D. 443, and "Underhill on Trusts," 9th ed., p. 75). So, if in one year the trustee in bankruptcy made any trouble, the trustees of the settlement could always arrange to defeat him in future.

In theory, no doubt, it would be right to say that the primary beneficiary can be prevented from keeping the whole income after the forfeiture. I have even found two or three old cases, cited in "Lewin on Trusts," 14th ed., p. 119, where steps were taken to prevent his doing so. But it is clear that in practice the primary beneficiary can be just as well off after the bankruptcy as before. I am supported in this view by "Underhill," where attention is called to the fact that trustees can *expend* what they will upon him (p. 75). "Wolstenholme" (12th ed., p. 1323) cites *Holmes* v. *Penney* and *Re Ashby* for the impeccable proposition of law, but adds: "Where there is an effective discretionary trust substantially covering the whole income of a person, it is seldom worth while to take proceedings in bankruptcy against him." Finally, there is the passage which I have italicised in the judgment of Vaughan Williams, J., in *Re Ashby*, where it is admitted that the bankrupt can in practice take the benefit of the forfeited estate, whatever may be the theoretical legal right of the trustee in bankruptcy. The genius of English jurisprudence has greatly lain, in its severe practicality, in its allegiance to the principle "*ubi remedium, ibi jus.*" Its remedies have mainly been confined to such as are effective: "equity, like nature, does nothing in vain." In this instance, it has deviated into a right that is no practical right, and a remedy that can be easily made nugatory. Little wonder that Sir Arthur Underhill exclaimed (p. 75) that this branch of the law is in an anomalous and unsatisfactory state!

If, then, compliant trustees are in a position to make the life of the primary beneficiary as comfortable after forfeiture as before, my case is made out. The primary beneficiary will be encouraged to extravagance; his potential creditors will judge by his apparent income and style of living, and will permit him to incur debts. Once he has incurred a forfeiture it will seldom, as is pointed out in "Wolstenholme," be worth while to take proceedings to save anything for the creditors from the wreck. In many cases, no doubt, the settlement trustees will see that the creditors get at least something. But that payment will be made in the exercise of their discretion, and will, for practical purposes, be their act of grace. In many other cases, equally, the settlement trustees will, after forfeiture, look after the dependents of the primary beneficiary in priority to the primary beneficiary himself. But that, too, is in their discretion (*Holmes* v. *Penney*, at p. 104). There is no duty on them to do any of those things, and, indeed, they would be well within their rights in preferring the primary beneficiary, and devising means of making their preference effective. While this possibility is open, the position cannot be called satisfactory, and justifies the fears and doubts expressed in my former article.

Landlord and Tenant Notebook.

Rent Paid by Stranger.

Smith v. *Cox* [1940] W.N. 287 was an action for illegal distress brought against a bailiff in somewhat unusual circumstances. It was not disputed that the plaintiff, aggrieved by his landlord's alleged failure to repair the premises, had withheld rent for three years. But on every quarter day during those three years the landlord had received the amount of rent due, this having been remitted to her by the defendant, who was a friend as well as her agent, and who knew she was dependent on the yield of the property for her livelihood. Invoking these payments, the plaintiff contended that no rent had been due when the defendant levied the distress.

The argument was based upon a passage in "Coke upon Littleton," at p. 206*b*: "But if a stranger of his own head who hath not any interest . . . will tender the aforesaid money to the feoffee at the day appointed, the feoffee is not bound to receive it." On this, however, Coke comments: "But if any stranger *in the name of* the mortgagor or his heir (without his consent or privity) tender the money, and

the mortgagee accepteth it, this is a good satisfaction." There was, Humphreys, J., said, no evidence of agency, and all that had happened was that the defendant had advanced money to the plaintiff's landlord, taking the risk of being able to recoup himself. His lordship held that the law laid down in *Simpson* v. *Egginton* (1855), 10 Ex. 845, governed the case. The facts there were that a city treasurer, mistaking and exceeding his authority, had paid the defendant, at that time clerk to the corporation, a year's salary. On hearing of this, the corporation dismissed the clerk and sued him for other moneys due to them, and in the action he sought to set off the amount of one year's salary. Thereupon they ratified the action of the treasurer which they had once repudiated, and Parke, B., referring to other authorities, held that they could do so, for the treasurer had purported to act as agent.

It is not always safe to apply authorities on other contracts to rent due from tenant to landlord, and the plaintiff's argument in *Smith* v. *Cox* was based largely on the proposition that rent is payable by the land. There is plenty of authority to illustrate this. One consequence is that rent must be reserved to the lessor—as long ago as *Whitlock's Case* (1609), 8 Coke Rep. 69*b*, "it was agreed, that the most clear and sure way was to reserve rent yearly during the term, and leave the law to make the distribution, without any express reservation to any person." In *Sacheverel* v. *Frogale* (1671), 1 Vent. 148, when it was contended against a devisee of a reversion that liability had terminated with the grantor's life, Sir Matthew Hale expounded the nature of rent in these words: "A Reservation is but a Return of somewhat back in Retribution of what passes; and therefore must be carried over to the Party which should have succeeded in the Estate if no Lease had been made, and that has always been held, where the Reservation is general . . . For the Law uses all Industry imaginable to conform the Reservation to the Estate."

Indeed, the argument that the third party had paid the rent can be said to beg a question which might have been raised. The *ratio decidendi*, as mentioned, was that the payments had not been made on the plaintiff's behalf; but it might well have been held that they were not payments of rent.

Good Husbandry and the Defence Regulations.

An article by *The Times* agriculture correspondent, which appeared in the issue of 29th July, gave an interesting and useful discourse on the present powers of County Committees and the War Agricultural Committee to deal with cases of bad husbandry, but invokes one or two propositions which, from a legal point of view, are of doubtful validity.

Thus the writer, when making the point that determination of a tenancy can now be effected very quickly, observes that "farming that passes as 'good husbandry' in peace-time is not always good enough to-day." Now the Defence Regulations, 1939, which were discussed in the "Notebook" in 83 Sol.J. 865, do provide for the termination of a tenancy when possession has been taken and the tenant is or was not cultivating according to the rules of good husbandry. This is under reg. 62 (2), but there is nothing to warrant the suggestion that the standard has been altered. Indeed, reg. 62 (5) provides that "rules of good husbandry" shall have the meaning assigned to that expression by s. 57 of the Agricultural Holdings Act, 1923. Granted that the statutory definition abounds with relative terms—"clean," "maintenance," "proper" and the like—it would, I submit, be straining language to suggest that words intended to define the duty of a tenant towards his landlord can have a different effect when expressly incorporated, by reference, into an enactment imposing a duty towards the community.

The Times correspondent later refers to "some owners who have borne with bad tenants for years, knowing that they could not replace them without incurring liability for heavy disturbance claims." Here accuracy demands that the word "knowing" be replaced by "unaware." The first of several bars to a right to compensation for disturbance, as set out in s. 12 (1) of the Agricultural Holdings Act, 1923, is: "unless the tenant, (*a*) was not at the date of the notice cultivating the holding according to the rules of good husbandry"; and (*b*) and (*c*) will also often avail the landlord. Apart from this, there is usually a summary remedy in the shape of forfeiture, which the "Notebook" last discussed on 22nd June, 1940 (84 Sol.J. 389).

The power to determine in the case of bad husbandry conferred by reg. 62 (2), and that conferred by reg. 62 (1), which may operate in the case of a contravention or failure to comply with directions, do not appear to be affected by the important decision of Bennett, J., in *E. H. Jones (Machine Tools), Ltd.* v. *Farrell and Muirsmith*, reported in *The Times* of 3rd August, granting an injunction to restrain nominees of a "competent authority" from carrying on a factory. For while both in the case of a factory, and in the case of a farm, directions may be given, and some control exercised, his lordship considered these powers *intra vires*; the regulation held to be invalid was reg. 55 (4), providing for the authorising of any person to carry on an existing industrial undertaking, and there is no corresponding regulation dealing with agricultural undertakings.

Our County Court Letter.

Costs and Expiry of Credit.

In a recent remitted action at Kington County Court (*Briggs & Co., Ltd.* v. *Llewellin*), the claim was for £85 as the balance due for the price of goods sold. The writ had been issued on the 10th January, 1940, for £118 4s., but leave to defend was given on the question whether the period of credit had then expired. The plaintiffs' case was that their local manager had no authority to give five months' credit, and the manager's evidence was that he had made no such arrangement. The defendant's case was that in August, 1939, he had £300 worth of tyres in stock, but was pressed by the plaintiffs' local manager to buy a further consignment. The defendant agreed on condition that he was allowed five months' credit, which expired on the 1st February, 1940. The writ was therefore issued prematurely, as no cause of action had arisen on the 10th January. His Honour Judge Roope Reeve, K.C., observed that, by the time the date of the hearing had arrived, liability was admitted. The only question was therefore one of costs. It was held that the plaintiffs had not been hasty in their issue of the writ, and judgment was given in their favour for £85, with High Court costs to the date of remission and costs on Scale C thereafter.

Colliery Manager's Length of Notice.

In *Jones* v. *Nook and Wyrley Colliery Co., Ltd.*, recently heard at Walsall County Court, the claim was for £48 as wages in lieu of notice. The claim being alternatively one for damages for wrongful dismissal, the onus was upon the defendants to prove that the dismissal was justified. The defendants' case was that in June, 1939, the plaintiff was appointed manager at a wage of £4, which was his own suggestion. The understanding was that he should be engaged on trial, subject to a week's notice. In September, owing to the plaintiff's failure to increase the output, a joint manager was appointed, with whom the plaintiff was asked to co-operate. In October, however, the plaintiff was given a week's wages (£4) in lieu of notice on the termination of his trial period. The case for the plaintiff was that nothing was said at the interview at which he was engaged as to the length of notice. He accordingly assumed that it would be three months, which was the customary period throughout the country. It would not have been worth while to leave a situation in South Wales to take a position on trial, and to be subject to a week's notice. His Honour Judge Caporn observed that the remuneration was low, in view of the importance of a colliery manager's position to the employers, the workmen and the Mines Department. Judgment was given for the plaintiff for £48, less the £4 paid, with costs.

Decisions under the Workmen's Compensation Acts.

Holiday Pay and Compensation.

In *Winnett* v. *Tamworth Colliery Co., Ltd.*, at Birmingham County Court, the applicant claimed 12s. 4d. as arrears of compensation. The accident had caused the loss of an eye, in respect of which compensation was payable at the rate of 22s. 4d. a week while the applicant was not earning wages. In one week the applicant had received only 10s., the balance having been deducted by reason of his having received holiday pay in that week. The applicant's case was that holiday pay was not "earnings," as it was not paid for services rendered under the contract. It was given for time when no work at all was done, and the amount did not depend upon work done, but on married status or age. The respondents agreed that the holiday pay was not wages, but it was contended that the pay was "earnings." It was in the nature of deferred pay, and the amount was properly deducted from compensation in respect of any week in which the applicant received holiday pay. His Honour Judge Finnemore observed that holiday pay was due under agreements between the Warwickshire Colliery Owners' Association and the Warwickshire Miners' Association. The pay was neither a present nor a charitable gift, as the recipient had a right to it.

Although not wages, holiday pay was "earnings," and the workman would have a right to sue for it, if unpaid. The employer was not entitled to give or withhold the pay, which was due by reason of the workman having done certain work. Inasmuch as the holiday pay was "earnings," the deduction of an equivalent amount from compensation, for that week, had been properly made. The claim therefore failed. It is to be noted that the above decision would operate in favour of the workman in the computation of the amount due on an original award of compensation based on pre-accident earnings.

Pin-prick Test of Numbness.

In *Scoynes* v. *Fulford & Sons*, at Bideford County Court, the applicant's case was that he was still totally incapacitated by reason of a compound fracture of the leg, sustained in March, 1939. In January, 1940, the applicant returned to work, but he was unable to continue after the 6th February, owing to the long hours. He resumed work on the 3rd March, but had to give it up on the 14th March. The medical evidence was that a spur of bone was affecting a nerve, and the applicant should do no work until it was known whether an operation would be necessary. The respondents' case was that, although there had not been a firm union of the fracture (as shown by the X-ray photos) the condition of the leg would be improved by moderate work. There was no actual evidence of the nerve being affected, although the applicant complained of numbness. After a pin-prick test had been applied, His Honour Judge Thesiger made an award of £1 5s. a week from the 14th March, 1940, less all sums already paid, with costs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Costs.

Sir,—Throughout the country food control committees are prosecuting under the direction of the Minister of Food and the divisional food officers for offences under the Emergency Regulations and Food Orders. Heavy penalties, in many cases, are being inflicted for what appear to be trifling offences, some of which have been referred to by an experienced magistrate as "disgusting, ridiculous and trivial."

It may be that it is necessary, in order to win the war, that reputable shopkeepers whose assistants overcharge by a farthing should be mulcted in fines and costs and that the solicitors' profession should be made the instrument for enforcing the letter of the law. That, however, is not the main point of this letter.

The reward for their labours, including taking instructions, applying to the court for the summonses, making the necessary copies, preparing notes for hearing, interviewing witnesses and attending as an advocate at the court where a whole morning may be spent, is the munificent sum of £2 2s.

The state of the profession is such, especially during the war, that there are a number of members of the profession who find it necessary to perform this sweated labour.

The position is even worse than that, if the court think that any case is a serious one which deserves heavy costs; they have, in many cases, awarded sums of £10 10s. or more.

The solicitor, however, does not get this; it is paid over to the prosecutor (the food control committee), who pouch the costs and dole out the £2 2s. This practice is apparently justified from the decision in *Re Parkinson*, 56 L.T. 717; 3 T.L.R. 528, which decided that local solicitors, retained by the Solicitor to the Treasury, conducting prosecutions, are agents for the Treasury and are bound to account for any sums of money received in respect of costs and to pay over to the Treasury the difference between the sums so received as costs and the sums allowed them on taxation.

Representations have been made to The Law Society as to this iniquitous state of affairs; they are attempting rather feebly in other directions to uphold the dignity of the profession by preventing under-cutting of fees.

Is it too much to expect them to take a very firm stand on this matter and to warn solicitors that they may be removed from the Rolls for unprofessional conduct if they accept these fees from a Government Department? It is in the recollection of your readers that a solicitor not long ago was suspended for habitually accepting such low fees as to bring the profession in contempt.

The costs in similar prosecutions in the last war, before the present increases in fees were sanctioned, were regularly taxed as against food committees at fees of £6 6s. or more.

23rd July, 1940. SUBSCRIBER.

To-day and Yesterday.

Legal Calendar.

5 August.—On the 5th August, 1622, Thomas Powell, lawyer and author, resigned his appointment as Solicitor-General in the Marches of Wales.

6 August.—On the 6th August, 1824, Abraham Bairstan, a dull, heavy looking man of sixty, was brought into court at the York Assizes charged with the murder of his wife. He stood looking round with a vacant glance apparently quite insensible of the nature of the proceedings. The turnkey who had brought him in declared that he had never heard him speak a word in prison though he sometimes mumbled inarticulately; Mr. Baron Hullock could extract no sign from him, and at last a jury was impanelled to say whether he stood mute of malice. Witnesses, including his sons, declared that for ten years he had been out of his mind and for seven years had not uttered more than one or two words. He was found mute by the visitation of God.

7 August.—When Lord Midleton, Lord Chancellor of Ireland, went off to England on the 7th August, 1716, to return three months later, he began a bad habit that was to get him into trouble. In 1718 and 1719 he indulged in a yet longer absence. Early in 1723 he was off again, but in that year a storm broke. The upshot of the matter was that a committee of the Irish House of Lords resolved that in their opinion "through the absence of the Lord High Chancellor there has been a failure of justice in this kingdom by the great delay in the High Court of Chancery." After that he felt obliged to resign.

8. August—On the 8th August, 1735, "Herbert Haines for several robberies on the highway in Essex, John Waller for housebreaking, Edward Ellis and Peter Isham for felony were hanged at Chelmsford, and Margaret Onion burnt for poisoning her husband." Haines was hanged in chains. He and the other three walked to the gallows in their shrouds and "behaved very decently."

9. August—In 1838 Kent experienced an extraordinary insurrection. A madman calling himself Sir William Courtenay (though his real name was John Thom) had been going about in the Canterbury neighbourhood persuading large numbers of farmers and labourers not only that he was a man of high birth entitled to some of the finest estates in the county, but also that he was the Saviour himself, invincible and invulnerable. He was fascinating, eloquent and handsome, and by the end of May his followers were worked up into taking arms in his behalf. For some days they marched about proclaiming his mission till, after the leader had shot a constable sent to arrest him, the military came up with them in Bossenden Wood. He shot a lieutenant dead and was himself killed with several of his followers. On the 9th August some of his men were tried at Maidstone for murder. They were condemned to death, but later their sentences were commuted to transportation.

10 August.—In 1782, France and England were at war, and on the 10th August a sensational case was tried at the Winchester Assizes. One David Tyrie was charged with high treason in communicating to the enemy lists of our warships together with information about their armaments and their movements. He had admittedly been concerned in smuggling transactions in respect of wines, and under cover of these he had sent several messages abroad. The evidence against him was strong and he was condemned to death.

11 August.—On the 11th August, 1759, Joseph Darby and his two sons were condemned to death at the Shrewsbury Assizes for the murder of a bailiff who had taken possession of his goods for rent. The young men had killed him with bludgeons while their father encouraged them. They were now sentenced to be hanged in chains. The old man's body was to be given to the surgeons for dissection.

The Week's Personality.

Thomas Powell was a Welshman, a lawyer, an author and a poet. He became a member of Gray's Inn in 1593, but for a time he devoted more attention to verse than to law. First, there came from his pen "Love's Leprosy" and next "The Passionate Poet," both inspired by the stories of the Greek classics. Then he turned himself from "bad serious poetry to chaffing prose, still interspersed with scraps of bad verse." Some of his productions proved too ironical for the authorities. Thus, his first prose work, "A Welch Bayte to Spare Provender or a Looking Backe upon the Times," dealing with the situation in England and Scotland on the death of Elizabeth, was suppressed by order of James I and the printer was fined. From about 1606 Powell began to devote himself to legal works, searching the Chancery records and the archives in the Tower of London. Between 1613 and 1622 his literary

work was interrupted by the exercise of his duties as Solicitor-General in the Marches of Wales, but on his resignation he was able to devote himself entirely to his "Repertorie of Records," published in 1631. Till his death in 1635 he continued to write, his last work being "The Art of Thriving or the Plain Pathway to Preferment." This throws a valuable light on contemporary English education.

TWO VOICES.

After a young barrister had finished arguing an appeal in the King's Bench Divisional Court recently he was asked to re-argue it from the point of view of the respondent, who was not represented. He acquitted himself well in this rather Gilbertian situation, but won his appeal. There is distinguished precedent for his double role, though generally in the past it has been played through inadvertence. Thus Bethell, afterwards Lord Chancellor Westbury, once by mistake drew a bill in Chancery against a client for whom he held a standing retainer, and at the hearing when his services were claimed by the defendant he had to argue against his own pleading. "Your honour," he began, "of all the cobwebs that were ever spun in a court of justice this is the flimsiest; it will dissolve at a touch." It did, and the solicitor who first instructed him must have been but little consoled when Bethell whispered in his ear as he left the court: "The bill is as good a bill as was ever filed."

ABOUT TURN.

Lord Eldon used to tell a somewhat similar story of the great Dunning in an earlier generation: "I was once junior to Mr. Dunning, who began his argument and appeared to me to be reasoning very powerfully against our client. Waiting till I was quite convinced that he had mistaken for what party he was retained, I then touched his arm and, upon his turning his head towards me, I whispered to him that he must have misunderstood for whom he was employed, as he was reasoning against our client. He gave me a very rough and rude reprimand for not having sooner set him right, and then proceeded to state that what he addressed to the court was all that could be stated against his client, and that he had put the case as unfavourably as possible against him in order that the court might see how very satisfactorily the case against him could be answered. And accordingly Dunning very powerfully answered what he had before stated." Similar stories are told of Lord St. Leonards and of the Scots Lord Eldin.

Obituary.

MR. G. L. WHATELY.

Mr. George Levinge Whately, J.P., solicitor, and formerly senior partner in the firm of Rooper & Whately, solicitors, of 17, Lincoln's Inn Fields, died on Saturday, 3rd August, in his eighty-sixth year. Mr. Whately was admitted a solicitor in 1877. He had been a director of The Solicitors' Law Stationery Society, Ltd., since 1922 until a few weeks before his death, and a life director of the British Law Insurance Co., Ltd., since 1907. The funeral took place at Golders Green Crematorium on Wednesday, 7th August, and the burial service was conducted by The Rev. George Whately (a cousin of the deceased). Among those present were Major E. G. Whately and Mr. E. C. Mileham (partners of Rooper & Whately), Mr. Douglas T. Garrett and Mr. John Venning (directors of and representing The Solicitors' Law Stationery Society, Ltd.), Mr. J. C. Cornelius (manager of and representing the British Law Insurance Co., Ltd.), Mr. H. S. Sirkett (representing staff of Rooper & Whately), Mr. Sidney Loewenthal, Mr. W. P. Phelps and Mr. Fielder Flint.

MR. N. J. LAKE.

Mr. Norman John Lake, solicitor, of Messrs. Lake, Friend and Tarbet, of Exeter, died on Monday, 29th July, at the age of fifty-four. Mr. Lake was admitted a solicitor in 1908.

MR. W. TURNER.

Mr. Wilfred Turner, solicitor, a partner in the firm of Turner & Wall, solicitors, of Keighley, died on Monday, 29th July, at the age of sixty-four. Mr. Turner was admitted a solicitor in 1900.

Books Received.

Oke's Magisterial Formulist. By JAMES WHITESIDE, Solicitor of the Supreme Court, and Clerk to the Justices for the City and County of the City of Exeter. 12th Edition. 1940. Royal 8vo. pp. xxxi, 1067 and (Index) 112. London: Butterworth & Co. (Publishers), Ltd. Price £4 net.

Tax Cases. Vol. XXII. Part X. London: H.M. Stationery Office. Price 1s. net.

Notes of Cases.

PRIVY COUNCIL.

Nicholas *v.* The Commissioner of Taxes of the State of Victoria.

Viscount Caldecote, L.C., Viscount Sankey, Lord Thankerton, Lord Russell of Killowen and Lord Roche.
25th April, 1940.

Revenue (Victoria)—Income tax and unemployment relief tax—"Dividend . . . credited . . . or distributed" to shareholder "deemed to form part of assessable income"—Undistributed profits in reserve fund—New shares allotted to shareholder—Paid for out of reserve fund—Whether shareholder taxable on value of shares received—Unemployment Relief Tax (Assessment) Act, 1933 (Victoria 24 Geo. V, No. 4171), s. 4—Income Tax Act, 1935 (Victoria 26 Geo. V, No. 4309), s. 2 (1).

Appeal from a decision of the High Court of Australia arising out of a special case stated by a judge of the county court of Melbourne under s. 66 of the Income Tax Act, 1923, of the State of Victoria.

The question at issue was whether an amount of £210,000 ought to be included in the assessment made upon the appellant taxpayer for the year 1935–36 as part of his assessable income liable to unemployment relief tax and special tax, which were imposed respectively by the Unemployment Relief Tax (Assessment) Act, 1933, and the Income Tax Act, 1935, both statutes of the State of Victoria. By s. 4 of the Act of 1933: ". . . (*b*) in the case of any person ordinarily resident in Victoria, who is a member or shareholder of a company whether registered in Victoria or not and whether carrying on business in Victoria or not . . . any dividend interest profit or bonus credited paid or distributed to him by the company . . . shall be deemed to form part of the assessable income of that person." By s. 2 (1) of the Income Tax Act, 1935, in the conditions prescribed by that subsection, "any dividend interest profit or bonus credited paid or distributed to him by the company is to be deemed to form part of the assessable income of that person." The parties were agreed that there was no material distinction between the terms of the two Acts, the words immediately under construction being "any dividend interest profit or bonus credited paid or distributed to him by the company." The appellant was a shareholder of a company incorporated in Victoria in 1926 with a nominal share capital of £100,000 divided into 100,000 shares of £1 each. In August, 1932, it was decided that the nominal capital should be increased to £500,000 by the creation of 400,000 new shares of £1 each. Before the 29th August, 1934, the company had issued 50,000 of those shares which were paid for in cash. In pursuance of that decision various resolutions were carried in the presence of and with the consent of all the shareholders of the company, entries being made in the books giving effect to the resolutions. With regard to the issue of 350,000 shares, there was an entry, under date the 25th September, 1934, "by reserve account £350,000." The parties were agreed that the shares were issued as fully paid. The sum of £350,000, which was applied in satisfaction of the amount due on the shares, was undistributed profits of the company, and the shares were distributed among the shareholders in proportion to their holdings in the company, 210,000 shares being issued to the appellant, which were at all material times of a value of £210,000, the sum now under assessment. The question stated by the county court judge for the opinion of the Supreme Court, and answered in favour of the Crown by the High Court, was: "Should the assessment of taxable income for the purposes of (1) special tax and (2) unemployment relief tax have included the said amount of £210,000?" (*Cur. adv. vult.*)

LORD THANKERTON, giving the judgment of the Board, said that their lordships were of opinion, on the facts, that a sum of £210,000 was credited to the appellant from the profits of the company within the meaning of the statutory provisions in question, and they agreed with the views expressed by the majority of the High Court. That sum was therefore rightly included in the assessment of the appellant to unemployment relief tax and special income tax. There could be no doubt that the company applied a sum of £210,000 from undistributed profits in satisfaction of the amount of the liability which would otherwise have rested on the appellant on the allotment of the 210,000 shares, which was made with his consent. Thus, by the action of the company, the appellant received a benefit in the issue to him of shares credited as fully paid by an application of undistributed profits. Secondly, the distribution of the shares and the application of undistributed profits was among the shareholders only, and was in proportion to their holdings in the company, and therefore in the proportions which would regulate the distribution of a dividend. Such an application by the company of an appropriate proportion of undistributed profits for the benefit of the shareholder was aptly described as crediting the shareholder with the amount necessary to render the shares fully paid, the source of the credit being profits of the company. It was argued that that conclusion was inconsistent with *Inland Revenue Commissioners* v. *Blott* [1921] 2 A.C. 171. That decision proceeded on different statutory provisions, and it must be shown that its reasoning clearly applied to the Victorian statutes here in question: see the comments in *Inland Revenue Commissioners* v. *Blott, supra,* on *Swan Brewery Co., Ltd.* v. *Rex* [1914] A.C. 231, the limits of which were further discussed in *Commissioner of Income-tax, Bengal* v. *Mercantile Bank of India, Ltd.* [1936] A.C. 478. In *Inland Revenue Commissioners* v. *Blott, supra,* although in form a dividend was declared, it was inevitably at once

applied to payment of the capital sums which the shareholders would otherwise have had to contribute. The share of profits so applied was never in the hands of the shareholder, nor had he ever a right to sue for it. Therefore in no sense could the shareholder be said to have received payment or to have had the right to demand payment, of a share of the profits, which, in such an event, would have formed part of his income for the purposes of British super-tax. Their lordships were of opinion not only that *Inland Revenue Commissioners* v. *Blott*, *supra*, was distinguishable from the present case in view of the difference of the statutory provisions under consideration, but that the reasoning of the speeches in that case was helpful in illustrating the contrast between the two cases. A dividend, profit or bonus of £210,000 was credited to the appellant from the profits of the company, and the question stated by the county court judge should be answered in the affirmative. The appeal should be dismissed.

COUNSEL: *Sir William Jowitt*, K.C., and *Heyworth Talbot*; *Tucker*, K.C., and *R. P. Hills*.

SOLICITORS: *Stafford Clark & Co.*; *Freshfields, Leese & Munns*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HOUSE OF LORDS.

Lewis *v.* Denye.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Romer, and Lord Porter. 27th June, 1940.

Master and servant—Machine not properly fenced—Workman injured through his own negligence—Whether employer liable—Factory and Workshop Act, 1901 (1 Edw. VII, c. 22), s. 10.

Appeal from a decision of the Court of Appeal (83 SOL. J. 192; 55 T.L.R. 391), affirming a decision of Tucker, J. (82 SOL. J. 647).

The defendant, Denye, employed the plaintiff, Lewis, at his woodworking factory. Lewis was employed to work at a power-operated circular saw. While he was doing that work his hand was severely injured through coming into contact with the saw. He therefore sued the defendant for damages for breach of statutory duty in failing to have the saw properly fenced. Tucker, J., held that there had been a breach by the defendant of his duty to fence under s. 10 of the Factory and Workshop Act, 1901, but he dismissed the action on the ground that the workman's own negligent act was the real and effective cause of the accident. The Court of Appeal upheld that decision and the workman now appealed. (*Cur. adv. vult.*)

VISCOUNT SIMON, L.C., said that he agreed with Tucker, J.'s finding with regard to the workman's own negligence. The question whether the obligation to keep dangerous machinery "securely fenced," which was imposed on the occupier by s. 10 of the Act of 1901, permitted the injured workman to hold his employer liable even though his injury was caused or contributed to by his own negligence had recently been considered in their lordships' house with reference to a similarly phrased section of the Coal Mines Act, 1911, in *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.*, [1940] A.C. 452; 83 SOL. J. 976. The decision in that case confirmed the view that negligence of the workman causing or contributing to the accident was a defence in an action where it was alleged that the defendant occupier had failed to fence securely. He (the Lord Chancellor) entirely accepted the conclusions in that case as applying to the construction of s. 10 of the Act of 1901. By that Act, as under s. 55 of the Coal Mines Act, 1911, too high a standard of care must not be demanded from a workman; but the appellant's "highly dangerous" act was not such an act as his familiarity with the machine might justify or condone. An act of that quality contributed to the appellant's injury so as to exonerate the respondent from liability. He (the Lord Chancellor) wished to make clear what was, and what was not, being decided in his judgment. Did s. 10 impose an obligation to provide such a degree of secure fencing for a dangerous machine as made the machine no longer dangerous at all to a reasonably careful workman, even though that result could only be attained at the expense of making the use of the machine impracticable, and hence in effect prohibiting its use altogether? Or was a machine to be regarded as "securely fenced" under s. 10 if the fencing protected the workman from danger so far as that could practicably be done consistently with the machine's being used? If the first of those two views were correct, that might amount to a prohibition of the use of circular saws altogether (even saws of the most modern type, fitted with the best-known safety devices). He would be extremely unwilling to make the present case the occasion for a final pronouncement on that issue, which was so important to British industry alike in peace and in war, unless that were necessary for their lordships' decision. It was not so necessary, and he reserved his opinion about the correctness of the view, expressed by Mr. Justice Salter in *Davies* v. *Thomas Owen & Co., Ltd.*, 83 J.P. 195; [1919] 2 K.B. 39, at p. 41, that s. 10 must be interpreted as meaning that "if a machine cannot be securely fenced while remaining commercially practicable or mechanically useful the statute in effect prohibits its use." The appeal must be dismissed.

The other noble and learned lords concurred.

COUNSEL: *Hemmerde*, K.C., *Miss E. A. MacDonald*, and *Pappworth*; *Hartley Shawcross*, K.C., and *Blackledge*.

SOLICITORS: *Field, Roscoe & Co.*, for *Berkson & Berkson*, Birkenhead; *W. Stanley Eastburn*, for *Herbert J. Davis, Berthen & Munro*, Liverpool.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL.

Pooley *v.* Bryning.

Sir Wilfrid Greene, M.R., and Goddard L.J. 10th April, 1940.

Procedure—Action brought in district registry—Defendant's right of removal to London—Not affected by considerations of venue—"Other good cause"—R.S.C., Ord. XXXV, r. 14.

Appeal from a decision of Macnaghten, J., in Chambers.

The plaintiff sued the defendant in the Manchester Registry, where the defendant was obliged to appear as both parties lived in Manchester; but he served a notice under R.S.C., Ord. XXXV, r. 14, that he wished the action to be transferred to London. Removal to London having automatically followed that notice, the plaintiff applied to have the action transferred back to the Manchester Registry, the only ground given for the application being that both parties and all the witnesses resided at Manchester. The Master granted the plaintiff's application, and Macnaghten, J., upheld his decision. The defendant now appealed. (*Cur. adv. vult.*)

GODDARD, L.J., reading the judgment of the court, said that Ord. XXXV, r. 13, provided that an action might, subject to r. 14, be removed to London as of right; but it was clear from the words of the rule that only a defendant had that right of removal. Rule 14 also provided that, if a defendant giving notice of removal were only a formal defendant, or had no substantial cause to interfere in the conduct of the action, or there were other good cause for proceeding in the Registry, the court might order the action to proceed in the Registry in spite of the notice. Counsel for the defendant contended first, that the *ejusdem generis* rule should be applied to the construction of the words "other good cause," so that those words must be limited to considerations affecting the defendant's real interest in the suit. Counsel called attention to rr. 16 and 17 in support of that argument, and to Ord. XII, r. 7. The combined effect of that rule and of Ord. XXXV, r. 17, was to give a plaintiff a right to apply for a transfer from London to a district registry on any ground; but he had to satisfy the court that there was sufficient reason for doing so. It would not, however, be right to put a limited construction on the words "other good cause" in r. 14. The doctrine *noscitur a sociis* should be applied with great caution, implying as it did a departure from the natural meaning of words: see *per* Rigby, L.J., in *Smelting Co. of Australia* v. *Inland Revenue* [1897] 1 Q.B. 182. There were many cases where it might be a real hardship to a poor plaintiff to have a case removed to the Central Office, so that all the interlocutory matters had to take place in London; each case must be decided on its own facts. It still remained, however, to consider whether facts which pointed clearly to the area of the district registry as the appropriate venue for trial were sufficient, without more, to deprive the defendant of his privilege of having the case removed to London for all purposes other than trial, a privilege given, it was to be noticed, as of right. If the proviso to r. 14 gave the court authority to deprive the defendant of that right merely on what, when considering venue, was called the balance of convenience, the privilege would be more apparent than real. In the majority of cases where a writ was issued in a local registry the case would naturally be what was called a local case; if that fact were to be good cause for depriving him of the right to remove the case to London, it was difficult to see the object of giving him the right. It was easy to imagine the case of an action against a landowner living in the area of a district registry in respect of property also in that area; his affairs might always have been in the hands of London solicitors whom he would wish to have conducting the action on his behalf; he could then exercise his right of removal, although the parties and all the witnesses lived in the district of the registry. The convenience of the parties and their witnesses, the date at which a trial could be had, and other such matters, were all, by Ord. XXXVI, r. 10, to be taken into account when fixing the place of trial; but there were no such provisions in Ord. XXXV, r. 14. The only authority on the matter was *Walker* v. *Crabtree* (1883) W.N. 197, where Field, J., appeared to have arrived at the same conclusion as the present court. The appeal would be allowed.

COUNSEL: *Platts-Mills* and *Lewes*; *Melford Stevenson* and *Scarman*.

SOLICITORS: *R. I. Lewis & Co.*; *Sharpe, Pritchard & Co.*, for *Pickstone and King*, Radcliffe, Lanarkshire.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Johnston *v.* Charles Osenton & Co.

Slesser and Clauson, L.JJ., and Singleton, J. 15th April, 1940.

Procedure—Action charging estate agent with negligence—Detailed investigation necessary—Order compulsorily referring matter to Official Referee—Validity.

Appeal from a decision of Tucker, J., in Chambers.

The plaintiff claimed damages for breach of contract and, alternatively, negligence, from the defendants, a firm of estate agents. He charged the defendants with breach of professional duty, and they denied liability. The plaintiff applied that the action should be tried by an Official Referee because it required prolonged examination of documents, or scientific and local investigation. The plaintiff's allegations related to detailed matters connected with the drainage of two building estates. The defendants denied that they had been in any way

negligent and unskilful, and contended that the plaintiff knew beforehand of the difficulties which would arise from the absence from the estates of main drainage. The Master and Tucker, J., took the view that the case was one for an Official Referee. The defendants appealed.

SLESSER, L.J., said that the grounds of appeal on which the defendants relied were (1) that, as they were estate agents, a finding of negligence in a court not generally frequented by the public would be very injurious to them; and (2) that, in so far as by s. 1 (1) of the Administration of Justice Act, 1932, an appeal lay to the Court of Appeal from an Official Referee's decision only on a point of law, the defendants would be precluded from seeking a review of the facts on a re-hearing, which would not be the case on appeal from the decision of a judge. As to the second ground, he (the lord justice) was not disposed to say that the judge should not have regard to the limitations of the grounds of appeal imposed by s. 1 (1) of the Act of 1932; but the point was urged for the defendants, before the judge, and there was no reason to suppose that he had not had regard to that limitation. With regard to the more general argument that a plea of negligence should be treated, in relation to the question of reference, as akin to a charge of fraud, in that it should not in the ordinary way be sent before an Official Referee, *Hoch* v. *Boor* (1880), 49 L.J.C.P. 665, seemed to be against the contention. That case went so far as to say that, even where there were issues involving a charge of fraud, the case might, if otherwise it were proper, be compulsorily referred if it involved a prolonged examination of documents. Counsel in that case had contended that, as negligence had been alleged, therefore, apart from fraud, character was at stake; yet the court upheld the order of the judge referring the matter to the Official Referee. Though it was ordered there that the Referee was to make a report to the judge, he (Slesser, L.J.) read the decision as being of general application. Thesiger, L.J. (49 L.J.C.P., at p. 667), said that, *prima facie*, issues involving the character of the plaintiff or the defendant in an action ought not to be referred; yet nowhere was it suggested in the judgments that a mere accusation of negligence as such raised any such *prima facie* rule against reference. That case was followed in *Sacker* v. *Ragozine & Co.* (1881), 44 L.T. 308, where a complaint of habitual negligence in duty as well as of misconduct and disobedience to orders was made. The case was treated by the court as one of negligence and misconduct not amounting to fraud; yet it was referred to an Official Referee. Generally there was no reason why, if it were to be said that Tucker, J., was wrong here, every building contract involving accusations of negligence—and there were few which did not—in which a reference was ordered should not be reversible on appeal when the judge thought fit for other sufficient reasons to refer the case to the Official Referee. The appeal failed.

CLAUSON, L.J., said that he would himself without further evidence be quite unable to hold that the plaintiff (who supported the order for a reference) had discharged the burden which lay on him of establishing that the action required a prolonged examination of documents or a scientific local investigation which could not conveniently be conducted by the court through its ordinary officers. That the action might well last several days, and thus be likely to hamper the progress of the non-jury list, he (his lordship) could well believe; but he would be prepared to hold that the plaintiff had failed to establish the existence of the conditions required by the relevant provisions of the Judicature Act, 1925, before the matter could be compulsorily referred to an Official Referee, and he would on that ground allow the appeal. In his opinion, on an application for a compulsory reference, the judge should require to be satisfied what were, generally speaking, the documents which were said to require prolonged examination and what were the nature of and reasons for the scientific or local investigation which it was alleged could not be conducted by a judge in the ordinary way. He could see no material on which the judge could come to any conclusion on those points in the present case. On all grounds, including those urged for the defendants, he was convinced that the judge's order was wrong, and he (Clauson, L.J.) would allow the appeal.

SINGLETON, J., agreed that the appeal should be dismissed.

COUNSEL: *Beyfus*, K.C., and *Berryman*; *J. P. Ashworth*.

SOLICITORS: *Berrymans*; *Gregory, Rowcliffe & Co.*, for *Gilbert H. White & Co.*, Guildford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

In re Smith-Bosanquet (deceased); Smith *v.* Smith-Bosanquet.

Bennett, J. 3rd July, 1940.

Settlement—Construction—Power to appoint annuity to widow—Annuity appointed "free of all deductions"—Whether free of estate duty—"Provision to the contrary"—Finance Act, 1894 (57 & 58 *Vict., c.* 30), *s.* 14 (1).

The testator, who died in 1907, gave power to G, the tenant for life of certain realty settled by the will, to appoint to or for the benefit of any widow whom he might leave surviving him any part of the income of the testator's residuary trust fund not exceeding £2,000 a year during the residue of her life. G, who died in 1939, by his will, in exercise of his power, appointed to his wife E, if she should survive him during the residue of her life, the yearly sum of £2,000 "free of all deductions," to be charged upon and paid out of the residuary personal estate bequeathed by the will of the testator and the investments representing the same. This summons was taken out by the trustees of the will of the testator for the determination of the question whether the annuity payable to the widow had to bear its proportion of the estate duty payable on the death of the tenant for life. The rate of estate duty was 32 per cent. If the annuity had to bear its proportion this would exceed £620 a year.

BENNETT, J., said that it was contended that, although the words "free of all deductions" in the appointment was an express "provision to the contrary" within s. 14 of the Finance Act, 1894, and would exonerate the annuitant from paying a rateable proportion of duty, unless the power expressly authorised the appointor to appoint free of deductions, the appointment was not within the terms of the power. This contention could not be accepted. If the appointment did not charge more than £2,000 per annum, it was within the power. The appointment absolved the widow from the liability to pay a proper proportion of the estate duty in respect of her annuity, but, as this did not exceed the authority conferred by the power, she was entitled to have a clear annuity without any deduction.

COUNSEL: *Jopling*; *Vaisey*, K.C., and *F. Watmough*; *Spens*, K.C., and *J. L. Stone*.

SOLICITORS: *Trower, Still & Keeling*; *Emmet & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re A.; S. *v.* A.

Bennett, J. 4th July, 1940.

Infant—Power of mother of illegitimate child to appoint a testamentary guardian—Guardianship of Infants Act (15 & 16 *Geo.* 5, *c.* 45), *s.* 5 (2), *Sched., Pt. II.*

This summons raised, *inter alia*, the question whether the mother of an illegitimate child, who had purported to appoint a guardian for her child by will, had power to make such an appointment.

BENNETT, J., holding that the mother of a child, whether legitimate or not, had power to appoint a testamentary guardian, said that it was expressly provided by s. 5, subs. (2), of the Act of 1925 that the mother of an infant had power to appoint a testamentary guardian. "Infant" in s. 5, subs. (2), included illegitimate child. The Schedule to the Act referred to the consent to be given on marriage by the guardian appointed by the mother of an illegitimate child; this implied that she had a power to appoint a guardian.

COUNSEL: *Forrester*; *Wilfrid Hunt*; *F. E. Skone James*.

SOLICITORS: *Smith & Smith*, Manchester; *Balderston, Warren & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Henderson's Conveyance.
In re the Law of Property Act, 1925.

Farwell, J. 8th July, 1940.

Restrictive covenants—Application to modify restrictions—No change in the character of the property or the neighbourhood—Covenant still of value—Statutory requirements not satisfied—The Law of Property Act, 1925 (15 *Geo.* 5, *c.* 20), *s.* 84 (1).

By an indenture of the 25th March, 1865, the purchaser of S. Lodge covenanted with W, the then owner of L. House, that he would not erect any building on a specified portion of the S. Lodge garden which immediately abutted on L. House garden. The effect of the restriction was to prevent any building being erected which would overlook that garden. By a conveyance of 1918, W's trustees conveyed to the appellant L. House and garden together with the benefit of the 1865 covenant. The appellant spent considerable sums on the garden, making a bathing pool and tennis court and an alpine flower garden. In 1938, S. Lodge was conveyed to the applicant, who had notice of the restrictions. He wanted to build a house on the portion of the land on which building was prohibited, although there was another portion available which was not subject to the restrictions. This latter site, however, he considered unsatisfactory. He applied to the Official Arbitrator under s. 84 of the Law of Property Act, 1925, to have the restrictive covenant removed so that he might be free to build on the site he thought best. The appellant opposed the application. The arbitrator made an order modifying the restrictions, so as to permit the applicant to build a dwelling-house not exceeding 40 feet in height and he awarded £500 compensation. The appellant appealed and the applicant appealed against the award of £500 compensation. Section 84 provides that the authority shall have power to modify any restriction affecting freehold land on being satisfied: "(*a*) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user; or . . . (*c*) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction . . . "

FARWELL, J., said he did not view s. 84 as designed to enable a person to expropriate the private rights of another. The section was not designed with a view to benefiting one individual at the expense of another. If a case was to be made out, there must be proper evidence that the restriction was no longer necessary for any reasonable purpose of the person who was enjoying the benefit of it. The applicant had bought the land with full knowledge of the restrictions. He had not

shown that there had been any change in the character of the property or the neighbourhood. The appellant's house had been and was still used as a private residence and the neighbourhood was still a high-class residential neighbourhood. The applicant had not therefore fulfilled the first requirement of the section. The restriction did not prevent the applicant using another portion of the land for the erection of a house. The enjoyment of the covenant was of practical benefit for the owner of L. House. It was a benefit to have a garden which was not overlooked. This was an attempt to avoid the obligations of a covenant, known to the applicant when he bought the property, to enable him to get a benefit by erecting his house, where he wanted it, at the expense of the appellant, who was to be made to give up a benefit of some value to which he was entitled. The arbitrator should have refused to make any award. Appeal allowed.

COUNSEL: *H. B. Vaisey*, K.C., and *Heathcote Williams*; *G. D. Squibb*.

SOLICITORS: *Lewis & Yglesias*; *E. P. Rugg & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Gasque *v.* Inland Revenue Commissioners.

Macnaghten, J. 26th April, 1940.

Revenue—Sur-tax—Transfer by resident in United Kingdom of assets to company registered in Guernsey—Company's business thereafter transacted in London—Company capable of having domicile—Domicile where registered—Income of company deemed income of transferor—Finance Act, 1936 (26 *Geo. 5 & Edw. 8, c. 34*), *s.* 18 (1).

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

By an agreement dated the 21st January, 1936, the appellant, Mrs. Gasque, who was ordinarily resident in the United Kingdom, transferred her life interest in the estate of her deceased husband to a company registered in Guernsey under the law of Guernsey in 1920. In return for that transfer, the appellant acquired a beneficial interest in all the issued shares of the company. Before the 31st January, 1936, the directors' meetings were held in Guernsey; after that date they were held in London. The company's business after the 31st January consisted solely of implementing the agreement of the 31st January, and was transferred to London. The notice which by s. 353 of the Companies Act, 1929, must be filed by a company registered in Guernsey and wishing to carry on business in the United Kingdom was duly filed. By the company's articles, annual general meetings should have been held in Guernsey. None was in fact held there. The seal of the company was in Guernsey, not having been required in London. By s. 18 of the Finance Act, 1936: "For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue . . . whereof . . . income becomes payable to persons resident or domiciled out of the United Kingdom . . . (1) Where such an individual has by means of any such transfer . . . acquired any rights by virtue of which he has . . . power to enjoy . . . any income of a person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax . . . that income shall . . . be deemed to be income of that individual for all the purposes of the Income Tax Acts . . ." Assessments to sur-tax were made on the appellant for the years 1935–36 and 1936–37 in sums, each of which included an amount received by the company but deemed to be her income under s. 18 (1). On her appeal to the Commissioners, she contended (1) that after the 31st January, 1936, the company was a person resident in the United Kingdom and not one resident or domiciled out of the United Kingdom within the meaning of s. 18, and (2) that, accordingly, the income of the company included in the assessment under appeal should not be deemed to be the income of the appellant. It was contended for the Crown (1) that the company was resident out of the United Kingdom for both the years in question; (2) that the word "domiciled" in the section referred to a company as well as to an individual; (3) that the domicile of the company was originally in Guernsey and had never been changed; and (4) that for both the years in question the assessments had been rightly made to cover the income transferred to the company. The Commissioners held that, as the company was admittedly functioning in Guernsey for at least ten months in the year 1935–36, it was resident in Guernsey for the whole of that fiscal year, and that for the year 1936–37, notwithstanding the fact that directors' meetings and some business were transferred to London and that the company might also be resident there, it was still resident in Guernsey. As to domicile, they held that the word "domicile" in s. 18 was applicable to companies as well as to individuals; that on the analogy of individuals the domicile of origin of the company was in Guernsey; and that no effective action had been taken to displace that domicile in either of the years in question. The assessments were accordingly affirmed and the taxpayer appealed.

MACNAGHTEN, J., said that while a body corporate could admittedly not have a domicile, any more than a residence, in the same sense as could an individual, yet, by analogy with a natural person, the attributes of residence, domicile and nationality were given by English law to a body corporate. A company formed under the Companies Acts had, it was agreed, British nationality, although, unlike a natural person, it could not change its nationality. So, too, such a company had a domicile. The domicile of origin clung to it throughout its existence (see the words of Sargant, L.J., in *Todd* v. *Egyptian Delta, &c., Co., Ltd.* [1928] 1 K.B. 152). The reversal of that decision in the House of Lords [1928] A.C. 1 had not affected the Lord Justice's pronouncement on the subject of the domicile of companies. The Solicitor-General had called attention to an American case, *Bergner and Engel Brewing Co.* v. *Dreyfus*, 70 Am. State Rep. 251, a judgment of Holmes, J., who held that a corporation had its domicile in the jurisdiction of the State which created it, and, as a consequence, had no domicile anywhere else. The present company's domicile was accordingly in Guernsey, if, as must be assumed in the absence of evidence to the contrary, the law of Guernsey was the same as that of England with regard to the domicile of limited companies. As to residence, he agreed that there was evidence to support the Commissioners' finding that the company had continued to reside in Guernsey in spite of the transaction of all its business in London after the 31st January, 1936. The appeal must be dismissed.

COUNSEL: *Needham*, K.C., and *Scrimgeour*; *The Solicitor-General* (Sir William Jowitt, K.C.) and *R. P. Hills*.

SOLICITORS: *Lovell, White & King*; *The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hotel Regina (Torquay), Ltd. *v.* Moon.

Hawke, Charles and Hilbery, JJ. 18th April, 1940.

Licensing—Unlicensed hotel—Sale on premises of intoxicating liquor by servants of proprietor—Profit taken by servants—Proprietor indirectly interested—Whether liable to penalty—Finance (1909-10) *Act*, 1910 (10 *Edw. VII, c.* 8), *s.* 50 (3).

Appeal by case stated from a decision of Torquay justices.

The appellant company were the proprietors of a hotel which was not licensed under the Licensing Acts. The sole directors of the company were one Plum and his wife, who alone managed the hotel. In June, 1939, two officers of the special inquiry staff of the Board of Customs and Excise were supplied on three occasions with bottled beer by the head-waiter and by the "boots." The price of the beer was paid to those servants. The beer was supplied from a cupboard in the hotel which the appellants alleged was provided by them to store intoxicants bought elsewhere and belonging to guests staying in the hotel. The stocks of beer and cider kept in the cupboard, other than any which might have been the property of guests of the hotel, were used for sales to guests, and the profits derived from those sales were shared solely between the two servants. Informations were preferred by the respondent, Moon, under ss. 43 and 50 (3) and the First Schedule to the Finance (1909-10) Act, 1910, charging the appellants with selling by retail certain beer contrary to the statute. Before the hearing of the informations against the appellants, informations were heard against the two servants, who pleaded guilty and were convicted and fined. At the hearing of the informations against the appellants, the justices were satisfied that Plum was aware that the two servants were selling the beer. It was contended on behalf of the appellants that, the servants having been convicted, the matter was *res judicata*; that the appellants derived no monetary profit from the sales; and that there was no sale by or on behalf of the appellants. It was contended for the respondent, *inter alia*, that, even if the appellants or Plum did not receive any monetary benefit from the sales of beer, an indirect benefit was derived by the facilities afforded to guests of obtaining intoxicants easily, without delay and at any hour. The justices convicted the company, who now appealed. By s. 50 (3) of the Act of 1910: "If any person sells by retail any intoxicating liquor for the retail sale of which he is required to take out a licence under this Act, without taking out such licence, he shall be liable . . . to an excise penalty . . . ."

HAWKE, J., said that the words "if any person sells" might be read as "if any person takes part in selling." The company provided the accommodation and the accessories in the place where the sale took place. They attracted purchasers to the premises and thereby introduced them to the persons who actually sold the beer. They also provided the cupboard in which the liquor was kept, and, presumably, the receptacles out of which the beer was consumed. They intended to have the transaction carried out at that place because they had an interest in it. The appeal should be dismissed.

CHARLES, J., agreed.

HILBERY, J., agreeing, said that at the basis of the appellants' argument lay the proposition that the only person who could effect a contract of sale was the person in whom was vested the ownership of the goods. That was fallacious. It was true that under a contract of sale the vendor must be in a position to pass the property; but that was quite different from saying that the only person who could pass the property was the legal owner. Goods on sale or return could be sold by the person to whom they were entrusted, because such a person had sufficient property in the goods to give the buyer a good title. If the proposition advanced by counsel for the appellants were correct, *Mellor* v. *Lydiate* (1914) 3 K.B. 1141, could not have been decided as it was.

COUNSEL: *G. O. Slade*; *The Attorney-General* (Sir Donald Somervell, K.C.) and *Valentine Holmes*.

SOLICITORS: *Walter Crimp & Co.*, for *Kitsons, Hutchings, Easterbrook and Co.*, Torquay; *Solicitor to the Commissioners of Customs and Excise*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1940, No. 1371/L.20.

SUPREME COURT ENGLAND

FEES.

THE SUPREME COURT (NON-CONTENTIOUS PROBATE) FEES ORDER, 1940.

DATED JULY 25, 1940.

The Lord Chancellor, the Judges of the Supreme Court, and the Treasury, in pursuance of the powers and authorities vested in them respectively by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and sections 2 and 3 of the Public Offices Fees Act, 1879,† do hereby, according as the provisions of the abovementioned enactments respectively authorise and require them, make, advise, consent to, and concur in, the following Order :—

1.—(1) In Schedule I to the Supreme Court (Non-Contentious Probate) Fees Order, 1928,‡ Fee No. 3 is hereby revoked and the following fee shall be substituted therefor :—

First Column.	Second Column.	Third Column.
Item.	Fee.	Character of Stamp.
	£ s. d.	
"3. On Probates or Letters of Administration in respect of the estate of a Member of the Armed Forces of the Crown or of a person dying from causes arising out of the operations of war, being causes arising during any war in which His Majesty may be engaged, where such estate is exempt from duty ..	0 15 0	Impressed."

In this paragraph a reference to the first, second, or third column means the first, second, or third column (as the case may be) in the said Schedule I.

(2) Upon the coming into operation of this Order the Supreme Court (Non-Contentious Probate) Fees Order, 1928, as amended by subsequent Orders, shall have effect as further amended by this Order.

2.—(1) This Order may be cited as the Supreme Court (Non-Contentious Probate) Fees Order, 1940.

(2) This Order shall come into operation on the 5th day of August, 1940.

Dated the 25th day of July, 1940.

Simon, C.
Hewart, C. J.
F. B. Merriman, P.
A. C. Clauson, L.J.

Lords Commissioners of His Majesty's Treasury. } *Patrick Munro.* *W. W. Boulton.*

* 15 & 16 Geo. 5. c. 49. † 42 & 43 Vict. c. 58.
‡ S.R. & O. 1928 (No. 972) p. 1228.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 3rd August, 1940.)*

PROGRESS OF BILLS.

ROYAL ASSENT.

The following Bill received the Royal Assent on the 1st August :—
Emergency Powers (Defence) (No. 2).

HOUSE OF LORDS.

Workmen's Compensation (Supplementary Allowances) (No. 2) Bill [H.C.].
Reported without amendment. [6th August.

HOUSE OF COMMONS.

Agriculture (Miscellaneous War Provisions) (No. 2) Bill [H.C.].
Read Third Time. [6th August.
Finance (No. 2) Bill [H.C.].
Read Second Time. [6th August.

STATUTORY RULES AND ORDERS.

No. 1386. **Borough of Boston** (Boston Dock) (Civil Defence Act, 1939) (Section 41 (1)) Order, July 18, 1940.
E.P. 1366. **Camping** (Restrictions) (Northern Ireland) Order, July 29.
E.P. 1390. **Central Electricity Board** (Main Transmission Lines) Order, July 30.
E.P. 1367. **Cheese** (Licensing and Control) Order, July 27.
E.P. 1399. **Control of Growing Trees** (No. 3) Order, August 1.
E.P. 1360. **Control of Hemp** (No. 6) Order, July 27.
E.P. 1374. **Control of Machine Tools** (No. 3) Order, July 29.
E.P. 1357. **Cream** (Control) Order, July 27, 1940.
E.P. 1379. **Defence** (General) Regulations, 1939. Order in Council, July 31, 1940, adding Regulation 40AB, and amending Regulations 9 and 15A.
E.P. 1402. Defence (General) Regulations (Isle of Man), 1939. Order in Council, July 31, adding Regulations 4B, 19A, 19C, 20AA and 39BA.
E.P. 1380. Defence (Game) Regulations, 1940. Order in Council, July 31.
E.P. 1381. Defence (Trading with the Enemy) Regulations, 1940. Order in Council, July 31, 1940, amending the Regulations.
E.P. 1382. Defence (Cinematograph Quotas) Regulations, 1940. Order in Council, July 31, 1940, amending the Regulations.
E.P. 1383. Defence (Local Defence Volunteers) Regulations, 1940. Order in Council, July 31, 1940, adding Regulation 3.
E.P. 1372. Defence (General) Regulations (Isle of Man), 1939. Amendment Order in Council, July 24.
E.P. 1364. **Encouragement of Exports** (Cotton) Order, July 31.
No. 1395. **Export of Goods** (Control) (No. 29) Order, August 2.
E.P. 1376. **Feeding Stuffs** (Maximum Prices) Order, 1940. Amendment Order, July 30.
No. 1350. **Gas,** Bath (Basic Prices) Order, July 24, 1940.
No. 1351. Gas, Prescot and District (Capital and Borrowing Powers) Order, July 12, 1940.
E.P. 1398. **Home-Grown Barley** (Control and Maximum Prices) Order, July 31.
E.P. 1375. **Home Grown Oats** (Control and Maximum Prices) (No. 2) Order, July 30.
E.P. 1358. **Home Produced Eggs** (Maximum Prices) Order, 1940. Amendment Order, July 27.
E.P. 1392. **London Passenger Transport Board** (Financial Arrangements) Order, July 26.
E.P. 1363. **Machinery and Plant** (Control) (No. 2) Order, July 31.
E.P. 1385. **Matches** (Control of Prices) Order, July 31, 1940.
E.P. 1405. **Midland (Amalgamated) District** (Coal Mines) Scheme, 1930. (Amendment) (No. 2) Order, July 31.
E.P. 1393. **Milk** (Retail Prices) Order, July 31.
E.P. 1365. **Northern Ireland Road Transport Board** (Execution of Work) Order, July 29.
E.P. 1401. **Port of London** (Increase of Charges) (No. 2) Order, July 25.
E.P. 1384. **Potatoes** (1940 Crop) (Control) Order, July 30.
E.P. 1388. Potatoes (1940 Crop) (Charges) Order, July 31.
E.P. 1389. **Prisoners of War and Internees** (Access and Communication) Order, July 27.
E.P. 1391. **Railways** (Additional Charges) (No. 3) Order, July 26.
E.P. 1406/S.60. **Rearing of Pheasants** (Prohibition) (Scotland) Order, July 15.
E.P. 1377. **Removal of Direction Signs** (No. 2) Order, July 30.
No. 1371/L.20. **Supreme Court** (Non-Contentious Probate) Fees Order, July 25.
No. 1356. **Swine Fever** (Amendment) Order, July 22, 1940.
No. 1373. **Visiting Forces** (British Commonwealth) (Application to the Colonies, etc.). Order in Council, July 24.
E.P. 1394. **Wheat** (Prices) Order, 1939. Amendment Order, July 31.
No. 1387. **Wild Birds Protection** (Administrative County of Devon) Order, July 23.
No. 1353/S.58. **Wild Geese** (County of Perth) Order, July 15, 1940.
No. 1354/S.59. Wild Geese (County of Stirling) Order, July 15, 1940.

[E.P. indicates that the Order is made under Emergency Powers.]

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Societies.

Manchester Law Society.

The 101st Annual General Meeting of the Society was held in Manchester on 30th July, 1940, the retiring President, Mr. W. E. M. Mainprice, being in the chair.

The report of the Council for the past year presented at the meeting showed that the present membership was 395 and that there had been twelve meetings of the Council and seventeen meetings of committees. Members serving with H.M. Forces or otherwise engaged on full-time national service had been released from obligation to pay their subscriptions during the period of such service, and in the case of members of the Council had been granted leave of absence for the purposes of their attendance record.

The report dealt fully with the question of right of audience before hardship committees and emphasised that the modification in the original regulation, which had resulted from representations by the Council of The Law Society, did not satisfactorily meet the objections to it. Other subjects dealt with in the report included the Solicitors

Bill, minimum scales, the effect of the Rent and Mortgage Interest Restrictions Act, 1939, on new mortgages, the financial provision for the local Law School and information as to a number of prizes and scholarships. The Council had decided under the power contained in the Solicitors (Emergency Provisions) Act, 1940, to postpone consideration of awards of the Rylands Brothers' and Charlesworth Scholarships for the year ended with the Easter Term, 1940.

The report of the committee of the Manchester and Salford Poor Man's Lawyer Association showed that 3,038 cases had been dealt with in the past year, of which 528 had been referred to conducting solicitors and 196 cases to the Poor Persons Committee, the remaining 2,314 cases being advised upon at the branches. The total number of interviews involved had been 5,665. The cases had been classified as follows: Matrimonial and family troubles, 31 per cent.; damage and accident, 12·7 per cent.; hire-purchase, 8·5 per cent.; landlord and tenant, 8 per cent.; libel and slander, 7·4 per cent.; debts and moneylenders, 7 per cent.; workmen's compensation, 5·6 per cent.; wills and intestacies, 4·9 per cent.; master and servant, 3·2 per cent.; miscellaneous, 11·7 per cent.

The President in his address referred to the circumstances under which he had held the office for a second term and to the esteem and affection felt for the late Mr. Hubert Farrar, who, to their very great regret, had died between the date of his nomination for the Presidency and the last Annual General Meeting. Mr. Farrar's family had occupied a leading position among the solicitors of the city for very many years.

During the past year a very large number of enactments had been added to the Statute Book, the majority of which were a necessary outcome of the war. No moratorium had been declared since the outbreak of the present war such as was established shortly after the outbreak of war in 1914, but the effect of emergency powers legislation passed during the present war had been to create a species of moratorium in favour of persons adversely affected by the war and persons serving in the Forces. Considerabl · delay and difficulty in the administration of trusts had been occasioned through trustees having left the country without granting a power of attorney and having become missing or prisoners of war. The Council of The Law Society had made representations with a view to disposal of these difficulties by appropriate legislation.

The President then referred in some detail to the provisions of the Solicitors Bill and to the conferences and meetings which had preceded its introduction into the House of Lords. He particularly called attention to the inclusion in the Bill of a provision enabling the Council of The Law Society to make rules as to the opening and keeping of accounts at banks for moneys of any trust of which the sole trustee was a solicitor or all the trustees were a solicitor and any partner, clerk or servant of such solicitor. The principle involved in this provision was new. On the question of compulsory membership of The Law Society, for which provision was also made in the Bill, opinion in the profession was by no means unanimous, but the poll taken after the Special General Meeting of The Law Society held on 23rd February had disclosed a majority of 4,050 to 2,190 in favour of compulsory membership.

The Bill also contained a provision which, if it became law, would remove doubts which had been expressed and supported by leading counsel as to the power of The Law Society to make rules fixing or providing for the fixing of scales of minimum charges and securing the observance of such scales.

The regional panel which had been appointed to deal with applications from Manchester and the surrounding district for deferment of liability for military service had already considered a number of applications. The decision of the panel was in each case communicated to the Lord Chancellor's Department by whom it was considered and a recommendation subsequently made to the Minister of Labour with whom the final decision rested.

They had been living in anxious and difficult times during the whole of the past year. Let them hope that at no very distant date the position would become easier and it would be possible to see more clearly than at present what the future was likely to have in store for them.

In conclusion, he thanked the Council and officers for the help and assistance which had been so readily afforded to him during the past year.

A vote of thanks to the retiring President for his address and for his services during the year was unanimously passed, and the following officers were elected for the ensuing year: President, Mr. Paul Archer; Vice-President, Mr. Alfred E. Hanson; Hon. Treasurer, Mr. W. E. M. Mainprice; Hon. Secretary, Mr. A. H. Goulty.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of Mr. EDWARD ANTHONY HAWKE as Deputy Chairman of the Hertfordshire (Hertford Division) Quarter Sessions. Mr. Hawke was called to the Bar by the Middle Temple in 1920.

Notes.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 22nd August, at 10 a.m.

The President of the Board of Trade was asked in the House of Commons recently whether he would clarify, by legislative enactment, the law governing postponement of redemption covenants of a mortgage or debenture as examined in the varying recent decisions by the Chancery Division, the Court of Appeal and the House of Lords, in the Knightsbridge Estates Trust case, so as to render unnecessary other costly disputes about a mortgage being a debenture as ambiguously defined in ss. 74 and 380 of the Companies Act, 1929. Major Lloyd George replied that this suggestion had been noted for consideration when the amendment of the Companies Act was under review, but no prospect of any such review could be held out in present circumstances.

Court Papers.

IN THE HIGH COURT OF JUSTICE—CHANCERY DIVISION.

EXTENSION OF TRINITY SITTINGS.

Rota of Registrars in attendance on

Date.	Court of Appeal.	Judge.
Aug. 12 ..	Blaker	More
,, 13 ..	More	Blaker
,, 14 ..	Blaker	More
,, 15 ..	More	Blaker
,, 16 ..	Blaker	More

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 15th Aug., 1940.

	Div. Months.	Middle Price 7 Aug. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption.
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4% 1957 or after	FA	108	3 14 1	3 6 11
Consols 2½%	JAJO	73⅛	3 8 3	—
War Loan 3½% 1955-59	AO	100⅛	2 19 8	2 19 2
War Loan 3½% 1952 or after	JD	99⅛	3 10 2	—
Funding 4% Loan 1960-90	MN	111	3 12 1	3 4 10
Funding 3% Loan 1959-69	AO	97⅛	3 1 6	3 2 7
Funding 2½% Loan 1952-57	JD	97	2 16 8	2 19 8
Funding 2½% Loan 1956-61	AO	91	2 14 11	3 1 10
Victory 4% Loan Average life 21 years	MS	110⅛	3 12 7	3 6 3
Conversion 5% Loan 1944-64	MN	109⅛	4 11 6	2 4 4
Conversion 3½% Loan 1961 or after ..	AO	100⅛	3 9 10	3 9 8
Conversion 3% Loan 1948-53	MS	101	2 19 5	2 16 10
Conversion 2½% Loan 1944-49 ..	AO	99	2 10 6	2 12 8
National Defence Loan 3% 1954-58 ..	JJ	100⅛	2 19 8	2 19 1
Local Loans 3% Stock 1912 or after ..	JAJO	85⅛	3 10 2	—
Bank Stock	AO	325	3 13 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	85	3 10 7	—
India 4½% 1950-55	MN	107⅛	4 3 9	3 11 11
India 3½% 1931 or after	JAJO	91⅛	3 16 3	—
India 3% 1948 or after	JAJO	79⅛	3 15 8	—
Sudan 4½% 1939-73 Average life 27 years	FA	107	4 4 1	4 1 3
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 14 7
Tanganyika 4% Guaranteed 1951-71 ..	FA	105	3 16 2	3 8 1
Lon. Elec. T. F. Corpn. 2½% 1950-55 ..	FA	89	2 16 2	3 9 1
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955-70	JJ	101	3 19 2	3 18 2
Australia (Commonwealth) 3½% 1964-74	JJ	88	3 13 10	3 17 10
Australia (Commonwealth) 3% 1955-58	AO	86⅛	3 9 4	4 1 6
*Canada 4% 1953-58	MS	109⅛	3 13 1	3 2 0
New South Wales 3½% 1930-50 ..	JJ	94	3 14 6	4 5 8
New Zealand 3% 1945	AO	94⅛	3 3 6	4 7 10
Nigeria 4% 1963	AO	104	3 16 11	3 14 9
Queensland 3½% 1950-70	JJ	93	3 15 3	3 18 1
*South Africa 3½% 1953-73	JD	99⅛	3 10 4	3 10 6
Victoria 3½% 1929-49	AO	95	3 13 8	4 3 8
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79⅛	3 15 6	—
Croydon 3% 1940-60	AO	91⅛	3 5 7	3 12 1
Leeds 3½% 1958-62	JJ	94	3 9 2	3 13 1
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	92	3 16 1	—
London County 3% Consolidated Stock after 1920 at option of Corporation ..	MJSD	79xd	3 15 11	—
*London County 3½% 1954-59	FA	100	3 10 0	3 10 0
Manchester 3% 1941 or after	FA	79⅛	3 15 6	—
Manchester 3% 1958-63	AO	91⅛	3 5 7	3 10 10
Metropolitan Consolidated 2½% 1920-49	MJSD	97xd	2 11 7	2 17 5
Met. Water Board 3% "A" 1963-2003	AO	82⅛	3 12 9	3 14 5
Do. do. 3% "B" 1934-2003 ..	MS	84⅛xd	3 11 0	3 12 7
Do. do. 3% "E" 1953-73	JJ	88	3 8 2	3 12 7
Middlesex County Council 3% 1961-66	MS	91⅛xd	3 5 7	3 10 1
*Middlesex County Council 4½% 1950-70	MN	105⅛	4 5 4	3 15 4
Nottingham 3% Irredeemable	MN	80	3 15 0	—
Sheffield Corporation 3½% 1968 ..	JJ	97⅛	3 11 10	3 12 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture ..	JJ	102	3 18 5	—
Great Western Rly. 4½% Debenture ..	JJ	108⅛	4 2 11	—
Great Western Rly. 5% Debenture ..	JJ	112⅛	4 8 11	—
Great Western Rly. 5% Rent Charge ..	FA	109⅛	4 11 4	—
Great Western Rly. 5% Cons. Guaranteed	MA	105⅛	4 14 9	—
Great Western Rly. 5% Preference ..	MA	79	6 6 7	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.